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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,280	11/06/2000	Stephen S. Jackson	2204/A89	8450

34845 7590 11/03/2005

STEUBING AND MCGUINESS & MANARAS LLP
125 NAGOG PARK
ACTON, MA 01720

EXAMINER

LAZARO, DAVID R

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/707,280	Applicant(s) JACKSON ET AL.	
	Examiner David Lazaro	Art Unit 2155	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-68 and 71-75.
Claim(s) withdrawn from consideration: _____.

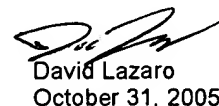
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.


SALEH NAWAR


David Lazaro
October 31, 2005

SUPERVISORY PATENT EXAMINER

Continuation Sheet

Continuation of 11:

Applicants argue (Pages 3-4 of remarks) - "...the proximity of a peer in Harris et al., is determined by reception of a signal transmitted by that peer. The peers of Harris et al. are clearly described as electronic devices in a communication network...The peer electronic devices in the communication network of Harris et al. are clearly not users, as the term would be understood by those skilled in the art. The peer devices of Harris et al. accordingly do not correspond to the users referred to in the above cited features of the present independent claims."

Examiner's response - Part of the overall purpose of the invention of Harris is to provide a device to automatically perform transactions in specific situations (Col. 4 lines 12-15. This may include, for example, identification of a user with no overt action by the user (Col. 4 lines 15-23 and Col. 21 lines 4-8), or appliance personalization of nearby appliances (Col. 10 line 7-16). These particular situations are described by Harris as occurring when the device is in physical proximity to the communication system (Col. 6 lines 20-45). Harris explicitly describes that this peer device can have a user/owner and corresponding personalization data. "Personalization data 52 characterize a user or owner of peer 20 and may change from user to user or from time to time" (Col. 8 lines 10-12). This allows a user to be identified and furthermore determined to be within close physical proximity. Col. 10, lines 11-16, explicitly alludes to this, stating, "As a result, the certain appliances will always be programmed with a particular user's personalization data whenever that user is near, without requiring action on the user's part, and regardless of prior persons who may have used the appliance." (emphasis

Art Unit: 2155

added). Col. 21 lines 4-8 also describes this in relation to a personal data peer device (Col. 20 lines 24-27), stating "Capability for storing and broadcasting an identifier or indicator of the person's presence or location relative to the data transactions..."

(emphasis added). As such, proximity of such a peer as described in Col. 6, lines 20-45, is a determination of physical presence of a user or owner in the form of close physical proximity to the communication system. As claims are to be given their broadest reasonable interpretation (MPEP 2111), the examiner considers the teachings of Harris to be sufficiently within the scope of the claimed subject matter. Applicants' arguments are not persuasive.

Continuation of 13:

Claims 1-68 and 71-75 are rejected as presented in the final office action mailed 08/23/05.

The objection to Claims 7 and 12 are withdrawn.

The rejection of claim 45, under 35 U.S.C. 101, is withdrawn.